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No. 411.

Br. of Tarsney for Appellants

SUPREME COURT

OF THE UNITED STATES.

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THE CITY OF DETROIT, THOMAS B. LUCKING, and WILLIAM B. THOMPSON, Appellants.

vs.

RALZEMOND A. PARKER, Appellee.

No. 411.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLANTS.

TIMOTHY E. TARSNEY,
Corporation Counsel.

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No. 411

THE CITY OF DETROIT,
THOMAS B. LUCKING and
WILLIAM B. THOMPSON,
Appellants,
vs.
RALZEMOND A. PARKER,
Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR APPELLANTS.

Appellee filed his bill in the Circuit Court of the United States for the Eastern District of Michigan, in Equity, praying therein that the city of Detroit and its officers be restrained and enjoined from selling and conveying, or attempting to sell and convey a certain lot, the property of the complainant, under and by virtue of certain proceedings had and taken by the city authorities in levying a special assessment for the paving of a street therein.

The provisions of the city charter under which the assessment, involved in this case, was made, are as follows:

CHAPTER XI.

"Sec. 33. Whenever the common council shall order any street, or any portion thereof, to be graded, or graded and

paved, or repaved, it may enter into contract for the making of such improvement according to the provisions of this charter, and after the cost and expense thereof has been ascertained, it shall cause the same, except the cost of repaving the cost of crosswalks, and of the work at the intersection of cross streets, to be assessed upon the lots and real estate herein made subject to such assessment as hereafter provided. In case of every contract for paving, the work to be performed thereunder shall be commenced and completed between the first day of May and the first day of November in each year; provided, that when such paving shall not be completed at such time, by reason of inclement weather, or other good cause, and from no fault of the contractor, the common council may extend the time for its completion. (As amended by act approved June 24, 1887.)

Sec. 34. For the purpose of such assessment, the lots and parcels of real estate situated on said street, and fronting the the portion thereof ordered to be improved, shall constitute one local assessment district, unless the common council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts. Such subdivision, if made, must be made before asking bids for the work; and in no case shall a city block be divided in making such division. The work for such local assessment district shall be bid for and let separately and such bidding and letting shall show:

First. The cost of all paving and grading, except that of the intersection of cross streets and alleys, the cost of the cross walks at such intersection, and the cost of repaving.

Second. The cost of the grading and paving of each portion of the street included within the lines of intersection of any cross street and alley.

Third. The cost of the cross walks at such intersections; provided, that in case where a side street merely opens upon and does not extend across the street to be paved, the space

formed by extending the lines of the former street to the middle of the latter street shall, for the purposes of this act, be treated as the spaces formed by the intersection of cross streets. All necessary platforms and curbings shall, for the purpose of such assessment, be deemed to be included within the term of paving. (As amended by act approved June 24, 1887.)

Sec. 35. The cost and expense of such improvement, except so much thereof as shall be for the work within the lines of intersection of cross streets and alleys, and for the cross walks at such intersections, and for repaving streets, avenues and highways, shall be assessed ratably, according to their extent or front on the lots, parts of lots, or parcels of real estate directly fronting on and within the local assessment district; provided, that if the assessment made on any such lot or other parcel of land shall, by reason of its triangular or other irregular shape, seem to the common council to be in equitable, said council may direct a just portion of such assessment to be paid from the general road fund. The cost of the work within the lines of the intersection of cross streets, and also the cost of the cross walks, shall be paid out of the general road fund. The cost of all repaving of streets, avenues and highways of the city shall be paid out of the repaving fund. The word "front," as used in this act, shall be construed to mean that part of the lot or other parcel of land which directly abuts on that part of the street to be improved. (As amended by act approved June 24, 1887.)

Sec. 36. Whenever in the improvements of a street as aforesaid, any land or real estate which has not been duly platted into city blocks or lots shall be required to be assessed to pay any part of the cost of such improvement, the council shall designate such part or parts thereof for such assessments as shall correspond as near as practicable to the portions of the block or blocks nearest adjacent thereto, subject to like assess-

ment, and the part or parts so designated shall be assessed as near as may be, in the manner herein provided for the assessment of lots.

Sec. 37. The board of assessors shall, when necessary, proceed to make out a list of all the lots or parcels or real estate, constituting a local assessment district as aforesaid, with the name of the owner or occupant of each lot or parcel of real estate so far as said board can ascertain the same, and also the length of front of each lot or parcel of real estate fronting directly on such improvement. Such board shall then assess the cost and expenses of the work, chargeable as aforesaid, upon the property in said list, ratably upon the several lots and parcels of real estate, according to the length of front thereof. When the assessment roll is thus completed, said board shall give notice by at least five publications in the city paper, that such roll is completed, and will remain in their office for twelve days from the first publication of said notice, for the inspection of all concerned. At the expiration of said twelve days, said board shall, after any needful revision and correction of such roll, sign the same and report it to the common council. Said council may then confirm the same, or may, when it shall deem necessary, refer the same back to the said board for further revision or corrections. And when the same shall be corrected to the satisfaction of said board it shall, by resolution, confirm the same. After such confirmation, such assessment roll shall constitute a lien, until paid, upon said lots or parcels of real estate, and shall be collected in such manner as may be authorized by law."

It will be observed that by section 34, the legislature of the State of Michigan had fixed and determined a local assessment district which shall bear the cost and expense of such improvement, except that part thereof which is directed to be paid at general city expense. "For the purpose of such assessment, the lots and parcels of real estate situated on said street, front-

ing the portion ordered to be improved shall constitute one local assessment district, unless the common council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts." The cost and expense of the improvement being ascertained, the board of assessors, by section 37, are required to "assess the cost and expense of the work chargeable as aforesaid upon the property in said list ratably upon the several lots and parcels of real estate according to the length of front thereof."

The complainant attacks the validity of the assessment in this case upon the supposition that it is violative of the rule adopted by majority of this Court, in Baker vs. Norwood, 176 U. S.

The opinion of this Court in Norwood vs. Baker has given rise to much controversy, and the extent to which the majority of the Court intended to apply the doctrine in that case seems to be very much misunderstood, and as a result thereof, we have had several and conflicting decisions rendered by courts in different parts of the country since that time.

The Federal Courts in Ohio, Indiana, Michigan, Missouri, New York and Washington, and the State Supreme Courts of Indiana, Massachusetts and Texas have held local assessments upon property immediately fronting upon the improvement as unwarranted, following the rule supposed to be laid down in the Norwood case.

Loeb vs. Trustees, 91 Fed. R., 37.
Fay vs. Springfield, 94 Fed. Rep., 409.
Charles vs. City of Marion, 98 Fed. R., 166.
Lyon vs. Tanawanda, 98 Fed. R., 361.
Cowley vs. Spokane, 99 Fed. Rep., 840.
Parker vs. Detroit, 103 Fed. R., 357.
Bidwell vs. Hough, 103 Fed. Rep., 363.
Hutchinson vs. Storey, 92 Texas, 688.
Sears vs. St. Com'r., 173 Mass., 350.
Adams vs. Shelbyville, 57 N. E., 114.
McKee vs. Pendleton, 57 id., 532.
Dexter vs. Boston, 57 N. E., 379.

Several of the State Supreme Courts have attempted to distinguish between the cases decided by them and the Norwood case, and in some instances, have not placed the broad construction upon the language of the opinion that the Federal Courts have placed thereon, and have upheld assessments based upon the frontage plan.

Webster vs. Fargo, 82 N. W., 732.
Wheeler vs. Dis. Court (Minn.), 83 N. W., 185.
Cass Farm Co. vs. Detroit, 83 N. W., 108.
Hemann vs. Allen, 57 S. W., 559.
Condag vs. Schnectady, 58 N. E., 130.
Hadley vs. DeBue, Cal., 62 Pac. R., 501.
Barbour Asphalt Paving Co., vs. Ess.

In view of the various methods adopted throughout the country, and the lack of uniformity in cities of the same State, in making local assessments, this real, or apparent, conflict of authority has created manifest uncertainty and confusion, and I confess that it has been no idle task to attempt to follow the train of reasoning of the numerous judges, and to arive at a conclusion which would either be acceptable to myself or to the Court. But it strikes me that the fundamental principle underlying this great question has been overlooked by many of the learned judges who have written thereon.

As we review the history of the country in relation to local assessments, we find that various plans have been adopted for defraying the expenses of what are termed local improvements. Whether such improvements consist of grading, paving, macadamizing streets, the construction of sewers, or an assessment for defraying the expense of condemnation of private property for public use, and sometimes other kinds of local improvements. In some instances, we find assessment by valuation, some by area, some by frontage, and some upon the theory that the property within affixed district is benefited by the improvements. Notwithstanding the fact that such improvements are local in

their character, they are, nevertheless, public improvements, provided for by the machinery of a public law and the authority to provide means for defraying the expenses of such improvements, likewise comes from the public, namely, the law-making power of the State.

While a distinction is drawn between taxation and local assessments, it should not be forgotten that local assessments is a species of taxation, and the authority to make them comes from the same source, namely, the legislative department of the State.

As expressed by Judge Dillon: "Courts are very generally agreed that the authority to require property specially benefited to bear the expense of local improvements is a branch of the taxing power, or included within it. * * * * Whether the expense of making such improvements shall be paid out of the general treasury or be assessed upon the abutting property, orother property specially benefited, and if, in the latter mode, whether the assessment shall be upon all property found to be benefited, or alone upon the abutters, according to the frontage or according to the area of their lots, is, according to the present weight of authority, considered to be a question of legislative expediency, unless there is some special restraining constitutional provision upon the subject."

Dillon, Section 754, 4th Ed.

Hence it is, that in the exercise of the taxing power, where not restrained by constitutional limitations, the legislatures of the various States have adopted, or authorized different methods of defraying the expenses of such improvements, and such different methods have been sustained by the highest courts in the land.

Assessments by value on area have been sustained in the following cases:

Gilmore vs. Hentig, 33 Kan., 156.
Lockwood vs. St. Louis, 24 Mo., 20.
Keese vs. Denver, 10 Col., 112.
Burnett vs. Mayor, 12 Cal., 76.
Maderia Irrigation District, 92 Cal., 296-324.
Crayton vs. Scott, 14 O. St., 438.
Daly vs. Swope, 47 Miss., 367.
Wallace vs. Shelton, 14 L. Ann., 498.
Wright vs. Boston, 9 Cush., 233.
Downer vs. Boston, 7 id., 277.
Snow vs. Fitchburg, 136 Mass., 183.
Strowbridge vs. Portland, 8 Or., 67.
Bishop vs. Tripp, R. I., 8 Atl., 692.
Richmond, etc., R. Co., vs. Lynchburg, 81 Va., 473.
Cooley, Taxation, 648-9.
Walston vs. Nevin, 128 U. S., 578.
Hager vs. Reclamation Dis., 111 U. S., 701.

Again, legislation which directs that all the expense of the improvements be collected out of the abutting property is sustained by the courts:

Parkersburg vs. Travenor, 26 S. E., 179.
Lent vs. Tillson, 72 Cal., 404.
Dorgan vs. Boston, 12 Allen, 223.
St. vs. Fuller, 34 N. J. L., 227.
Spencer vs. Merchant, 125 U. S., 345.
Bowman vs. Ross, 167 U. S., 548.

The front foot rule has also been upheld by numerous authorities.

Judge Cooley, in speaking of assessments by front foot, says: "In many instances where streets were to be opened, or improved, sewers constructed, water pipes laid, or other improve-

ments entered upon, the benefits of which might be expected to diffuse themselves along the line of the improvement, in a degree bearing some proporton to the frontage, the legislature has deemed it right and proper to take the line of frontage as the most practicable and reasonable measure of probable benefits, and making that standard, to apportion the benefits accordingly. Such a measure of apportionment seems, at first blush to be perfectly arbitrary and likely to operate in some cases with great injustice, but it cannot be denied that in the case of some improvements frontage is a very reasonable measure of benefits, much more so, than value could be, and perhaps approaching equality as nearly as any estimate of benefits, made by the judgment of men. However this may be, the authorities are well united in the conclusion that frontage may lawfully be made the basis of apportionment." Citing.

Pennock vs. Hoover Rawle, 291.
McGonigle vs. Alleghany City, 44 Penn. St., 118.
McGee vs. Commonwealth, 46 id., 308.
Sprung Garden vs. Wistar, 18 id., 195.
Stroud vs. Philadelphia, 61 id., 255.
Covington vs. Boyle, 6 Bush, 234.
State vs. Elizabeth, 30 N. J., 365.
Same vs. Same, 31 N. J., 547.
State vs. Fuller, 34 id., 227.
Ernst vs. Kunkle, 5 O. St., 520.
Upington vs. Oviatt, 24 id., 232.
Barnes vs. Hutchison, 2 Kan., 455.
Parker vs. Challis, 9 id., 155.
St. Joseph vs. Anthiny, 20 Mo., 537.
Fowler vs. St. Joseph, 37 id., 228.
Nennan vs. Smith, 50 id., 525.
Chambers vs. Satterlee, 40 Cal., 497.
Palmer vs. Stumpf, 29 Ind., 329.

Cooley Taxation, p. 451, to which may be added:

Davis vs. Lynchburg, 6 S. E., 230.
Raleigh vs. Pierce, 14 S. E., 521.
Norfolk vs. Ellis, 26 Grat., 224.

Mayor vs. John Hopkins Hospital, 56 Md., 1.
Maale vs. Mayor, 61 Md., 224.
Rutherford vs. Hamilton, 11 S. W., 249.
Chamberlain vs. Cleveland, 34 O. St., 551.
Palmer vs. Stumpf, 29 Ind., 329.
Seeley vs. Pittsburg, 82 Penn. St., 300.
Hamilton vs. Philadelphia, 65 Pa. St., 146.
In re Washington Avenue, 69 Pa. St., 352.
Harrisburg vs. McCormick, 129 Pa. St., 213.
McKeesport vs. Bush, 31 Atl., 49.

It is settled law in Michigan that it is competent for the legislature to authorize the cost of local improvements upon the abutting property according to frontage. It is true, the rule was not adopted with the full concurrence of the early bench.

Williams vs. Mayor of Detroit, 2 Mich., 560.
Woodbridge vs. Detroit, 8 Mich., 274.
Motz vs. Detroit, 18 Mich., 495, but the later cases of:
Sheley vs. Detroit, 45 Mich., 431.
Kalamazoo vs. Francoise, 115 Mich., 554.
Cass Farm Co., vs. Detroit, 83 N. W., 108.

settle the rule in this State? Judge Cooley, in the Sheley case, said: "If anything can be regarded as settled in municipal law in this country, the power of the legislature to permit such assessments and to direct an apportionment of the cost by frontage, should by this time be considered as no longer open to controversy."

The power of the legislature to determine the percentage of the cost of the work, to be raised by local assessment, was sustained in Norfolk vs. Ellis, 26 Grat., 224; Hilliard vs. Comm'r, 24 S. E., 738; Parkersburg vs. Travenor, 26 S. E., 179; Bowman vs. Ross, 167 U. S., 548.

The legislature has itself bound a specfic tax upon each acre of land within a district created by itself:

Egyptian Land Co. vs. Horden, 27 Mo., 495.
Williams vs. Carmmock, 27 Miss., 209.
Alcorn vs. Hainer, 38 Miss., 652.

and has authorized such tax to be levied by the district (Wallace vs. Shelton, 14 La. Ann., 503), and has authorized a present uniform rate for each sewer upon the estimated cost of all sewers within the district.

Leominster vs. Conant, 193 Mass., 384.

Authorities are not wanting which hold that the element of benefits is not the controlling factor in the validity of a local assessment, but that assessments may be sustained without reference to such benefits.

McTruddy vs. Smith, 67Mo. App., 205.
Warren vs. Henley, 31 Iowa, 31.
Dewey vs. Demoine, 70 N. W., 605.
Michener vs. Philadelphia, 118 Penn St., 535.
Harrisburg vs. McCormick, 129 Pa. St., 213.

In Iowa, it is held that local assessments are not based on benefits, but on the simple ground that the object is public, and that the system of taxing abutting lots secures such a just and fair disposition of the burden as to be within the rule requiring uniform taxation. Warren vs. Henley, 31 Io., 31: ——— vs. Heeshire, 32 Io., 271.

In Wisconsin, the theory of benefits is denied, and the power to impose such burdens placed upon the constitutional recognition of the power to make assessments, as distinguished from taxation.

Weeks vs. Milwaukee, 102 Wis., 242.

In Lent vs. Tillson, 72 Cal., Sec. 428, Mr. Justice Temple said: "The main practical difference between assessments for a local improvement and general taxation seems to be that in in general taxation, it is difficult and generally impossible for the Court to say that the purpose of the tax is not a public purpose and that no benefit will result to the taxpayer; while in local assessments it is more easy to say that the improvement will not be a special benefit. Still *the benefit is not the source of the power;* that is inherent in the government, and is only limited by express or implied limitations found in the constitution, or by its own nature, perhaps. Within these limitations, the legislature is the sole judge of when, and to what extent the power shall be used."

Cooley on Taxation, p. 622: "The power to determine when a special assessment shall be made, and on what basis it shall be apportioned, is wisely confined to the legislature, and could not, without the introduction of some new principle in representative government, be placed elsewhere."

In re Madeira Irrigation District, supra, the Court said: "It is not necessary to show that the property within the district may be actually benefited by the local improvement, and even if it positively appear that no benefit is received, such property is not thereby exempt from bearing its portion of the assessment, nor is the act in the constitution, because it provides that such property shall be assessed."

Indeed it cannot be said that an assessment of the cost of a public improvement by area, by valuation, by legislative determination of the percentage of the cost to be raised by local assessment, or from the abutting property, or by the front foot rule necessarily takes into consideration the question of benefits, or at least of the whole benefit, which the property assessed derives from the making of such improvement.

I conclude, therefore, that we must look further than the mere method adopted to defray the expenses of such improve-

ments, and ascertain, if possible, upon what principle the legislative authority to make such assessments is exercised.

It must be borne in mind that the legislature of a State possesses absolute power and authority to legislate in relation to all matters of purely State or local concern, in accordance with its own judgment of policy, except so far as such legislature may be restrained by constitutional limitations. I speak now of constitutional limilitations contained in the constitution of the State.

The only provision in the constitution of Michigan bearing upon the subject of taxation is section 11, article 14: "The legislature shall provide an uniform rule of taxation, except on property paying specific taxes; and taxes shall be levied on such property as shall be prescribed by law." Section 12: "All assessments hereafter authorized shall be on property at its cash value." These provisions are held to apply to taxation proper, but not to local assessments, except in so far that the rule of uniformity must be observed within the limits of the special taxing district. These provisions of the State Constitution requiring the uniform rate of taxation and cash valuation in the assessment of property have no application to local assessments for local improvements, such as grading and paving of a street, but relate only to the valuation of property and its taxation for general purposes.

Mott vs. Detroit, 18 Mich., 444.
Woodbridge vs. Detroit, 8 Mich., 274.
Hoyt vs. E. Saginaw, 18 Mich., 39.

Therefore, the legislature of Michigan is at liberty to adopt such measure as it may choose in defraying the expense of local improvements; and local assesments being a species of taxation, and the power to tax being a sovereign power, any method adopted by the legislature may be upheld: the benefit equiva-

lent, and the burden is not necessarily an element to their validity.

I am aware that it has frequently been said that all citizens derive a benefit from the government as an equivalent for the taxesimposed upon them, but thisview is more chimerical than real. Blackwell on Tax Titles, page 1, defines tax as "Burdens of charges imposed by the legislative power of the State upon persons or property, to raise money for public purposes." Mr. Justice Field, in Perry vs. Washburn, 29 Cal., 318, gives substantially the same definition. Judge Kingman, in People vs. McCree, in 34 Cal., 34, said "tax is a charge levied by the sovereign power upon its subjects. Judge Agnew, in Hillvish vs. Catterman, 64 Pa. St., 154, asks, "What are taxes but the revenue collected from the people for objects in which they are interested?"

Judge Cooley, adopting the opinion of Judges in 58 Me., 591, says taxes are defined as being an enforced proportional contribution of persons and property, levied by the authority of the State for the support of the government, and for all public needs; they are the property of the citizen, demanded and received by the government to be disposed of to enable it to carry into effect its mandate and discharge its manifold functions. * * * * The power of taxation is an incident to sovereign authority, and is co-extensive with that of which it is an incident; all subjects, therefore over which the sovereign power of the State extends are, in its discretion, legitimate subjects of taxation, and this may be carried to any extent which the government may choose to carry it." Citing Chief Justice Marshall, in McCollough vs. Maryland, 4 Wheaton, 428, 429; Providence Bank vs. Billings, 4 Pet., 514; Charles River Bridge vs. Warren Bridge, 11 Pet., 420; Nathan vs. Louisiana, 8 Howard, 73; People vs. Brooklyn, 4 N. Y., 419. "In its very nature, it acknowledges no limits, and the only security against abuse must be found in the responsibility of the legislature which

imposes the tax to the constituency who are to pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature in imposing it shall keep within the limits of legislative authority."

Cooley, page 1-4.

Mr. Justice Ruggles, in People vs. Brooklyn: "Nor has the State Constitution ordained or forbidden that the taxes shall be apportioned according to benefit which each taxpayer is supposed to receive from the object on which the tax is expended. In all these particulars, the power of taxation is unrestrained." 4 N. Y., 319.

The general purposes of taxation are: First, defense of the commonwealth; second, the administration of justice; third, the expense of public works and instruction; and fourth, the expense of supporting the dignity of the State.

Mr. Justice Gray, speaking for this Court, in Spencer vs. Merchant, 125 U. S., 348, said: "That power of taxation is unlimited, except that it must be exercised for public purposes."

The fact that the exercise of the sovereign power of the State, exercised through the functions of its legislative department, for the purpose of raising revenue or funds to meet some public demand, is the sole and only power and legitimate reason for the imposition of any tax, has frequently been overlooked by many of the learned judges, and by a process of reasoning which it is difficult to understand, have sought to weave into the general doctrine of taxation the theories that taxes are apportioned in proportion to the benefits or advantages in some inscrutable and undefined manner received by the person or property upon which such tax is imposed.

While it is undoubtedly true that in many instances benefits in some form or another may follow, not the imposition, but

the expenditure of moneys received by taxation, and as a result thereof, it by no means follows that such resultant advantages is a necessary incident to the exercise of the power of taxation, nor is it true that in all cases the property or persons taxed are benefited by the imposition of such tax.

I am not aware of any rule which requires the doctrine of equivalents, or measure for measure, or that we must give as much as we take, necessarily involved in the power of taxation; for persons and things are taxed for which it is difficult to find wherein they receive any return. I take it that it would be quite difficult to convince a bachelor, who may be a large taxpayer, that he is benefited to any considerable extent by the payment of a school tax, or an heir that he has derived any considerable advantage from the imposition of a five per cent tax upon his inheritance; or an importer or consumer of imported goods, of the advantage to him of governmental duty in the increased cost thereby. While lands may be increased in value by reason of the expenditure of public moneys, in the improvement of highways, yet taxes levied and assessed upon personal property have the effect of decreasing instead of enhancing its value. Instance: Two stocks of goods, one in a locality where personal property may be exempt from all taxation, or where the tax rate is lower than in another locality. Personal property is of greater value to the extent to which it is relieved from the burden of taxation.

I conclude, then, that benefits are not a necessary equivalent of taxation, and that those learned judges who have endeavored to weave this intangible and inscrutable theory have confused the principles of eminent domain with the power of taxation. In eminent domain, where the public sequesters private property for public use, constitutional requirements as well as a sense of justice demand that equivalents shall be paid for that which is taken.

"A tax exacts money or service from individuals for their

respective shares or contribution to some public burden. Private property taken for public use by the right of eminent domain is taken, not as the owner's share or contribution to the public burden, but as so much beyond his share. Special compensation is, therefore, to be made in the latter case, because the government is a debtor for the property so taken, but not in the former, because the payment of taxes is a duty and creates no obligation to repay, otherwise than in the proper application of the tax."

Cooley on Taxation, 624

Wherein, then, lies the distinction, if any, in principle, between taxation and local assessment? Both alike are for public purposes. Taxing districts are established for the purpose of apportioning upon such districts such taxes as the legislature, in its wisdom and discretion, sees fit to impose for a public purpose. For State purposes the entire State is one taxing district; counties, towns, cities, villages, school districts, and road districts are each severally constituted for the purposes for which such subdivisions are created. Undoubtedly it would be within the power of the legislature of the State to provide that all highway taxes should be assessed as a State tax, and distributed among the various localities according to legislative discretion, and for the purpose of more equal distribution that the moneys raised in a particular locality for highway purposes shall be expended in such locality, but the legislature has seen fit to adopt a system of local taxing districts, and to impose upon each township, city and village a duty of keeping the highways within their respective limits in a reasonably safe and fit condition for public traffic. For that purpose they have empowered such municipalities to levy a local tax; so each locality or community becomes a taxing district. Inside these, again, in the country districts, we find another subdivision, known as road districts, under the particular charge of a pathmaster, or over-

eer of highways. Usually one mile, more or less, is within he jurisdiction of such overseer. Taxes are imposed in such oad districts, differing in amount in the different districts in he same town; and such taxes may be paid by labor, or by urnishing implements for the improvement of the highway. nd yet such highways are common to all the inhabitants of the tate. So that, in this instance, we find a work that is general nd common to the entire State imposed upon a small subdivis- on thereof, and the task of the construction and keeping in epair is imposed upon the few.

Instance: A highway traversing the entire State; upon it are several cities. The inter-urban highway is kept in ondition by the localities or road districts through which it ns. Within the limits of a city, where travel is more con- sted, and a greater use is made of the highway, the public quirements demand that such highway within the limits of ch city shall be kept in better condition that in the country. nce, the public demands that such highway, within the limits f the city, shall be paved with cobblestones, asphalt, wood, or her kind of pavement.

The legislature here determines that a new taxing district is eper, for the purpose of the maintenance of such highway ithin the limits of the city, either for the paving or re-paving ereof, and it determines that the property fronting upon such ghway, upon either side thereof, shall constitute a separate ad district, and that the cost of the maintenance shall be appor- ned upon the property within such taxing district. What is is but an extension of the system of subdividing the State to local taxing districts? And how does the purpose of such s become changed by reason of the method by which such portionment is made? Whether by valuation, by area, by ot front, or in accordance with the benefits which each parcel y be deemed to receive from the making of such improve-

ment. Surely, if the legislature has the power to spread an ad valorem tax in the country, it may do so in the city; if it has the power to apportion a tax according to benefits in a city, why has it not the same power in the country? What letter or spirit of the State constitution is violated, because the legislature, in its wisdom, chooses to adopt one course rather than the other?

Suppose that the legislature of Michigan should see fit to enlarge these local taxing districts, and subdivided the city into as many road districts as there are wards, and to make each road district so constituted a taxing district for the purpose of maintaining the pavements within the limits of such district; or suppose it should further extend such district, and say that the entire city shall bear all the expense of maintaining the streets by a general tax assessed upon all the property in the city. What constitutional provision is violated thereby? I answer, none. It resolves itself into a question of legislative policy, with which the courts have no concern, except to see that the proceedings are properly conducted, and rights are protected in the carrying out of such policy.

II.

As was said by this Court in County of Mobile vs. Kimball, 102 U. S., "When any municipal work is authorized, it rests with the legislature, unless restricted by constitutional provisions, to determine in what manner the means to defray its cost shall be raised. It might apportion the burden ratably among all the counties, or other particular subdivisions of the State, nor the wholly or greater share of the whole, upon that county, or portion of the State especially and immediately benefited by the expenditure."

The whole subject of taxation belongs to the legislature,

The authority may be exercised directly, or in the case of local assessment or tax, it may be left to local boards or bodies. It has been repeatedly decided that the legislative act of assigning districts for special taxation on the basis of benefits cannot be attacked on the ground of error of judgment regarding special benefits, and defeated by satisfying a court that no special, pecuniary benefit was received. If the legislature has fixed the district and laid the tax for the reason that in the opinion of the legislative body such district is pecuniarly benefited, its action must, in general, be deemed conclusive.

Baltimore vs. Hughes, 1 Gill & J., 480
Litchfield vs. Vernon, 41 N. Y., 123
People vs. Lawrence, 41 N. Y., 140
Philadelphia vs. Field, 58 Pa. St., 320
McCon vs. Pattee, 57 Miss., 378
Kelly vs. Cleveland, 34 O. St., 468
Bigelow vs. Chicago, 90 Ill., 40
Cooley Taxation, 640

This rule was approved by this Court in Spencer vs. Merchant, 125 U. S., 343: "Where an assessment for the expense of regulating, grading and repairing a street for travel was laid upon the lands lying within 300 feet of each side, which, in the judgment of the commissioners, would be benefited by the improvement." Where this, and other objections were urged, Mr. Justice Gray said: "Each of these things was within the power of the legislature, whose action cannot be reviewed by the Court upon the ground that it acted unjustly or without appropriate and adequate reason." Citing, with approval, Litchfield vs. Vernon, 40 N. Y., 123; People vs. Brooklyn, 4 N. Y., 427; People vs. Flagg, 46 N. Y., 405; Horn vs. New Lots, 83 N. Y., 100; Cooley on Taxation, 450. "The legislature may commit the ascertainment of the sum to be raised, and of the benefited district to commissioners, but it is not bound to do so,

and may settle both questions for itself, and when it does, its action is necessarily conclusive and beyond review."

So that, in the case we are considering, the legislature provided by Section 34 of Chapter 11, of the charter of Detroit: "For the purpose of such assessment, the lots and parcels of real estate, situated on said street and fronting the portion thereof ordered to be improved, shall constitute one local assessment district, unless the common council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts." By Section 35: "The cost and expense of such improvement, except so much thereof as shall be for the work within the lines of intersection of cross streets and alleys, and for the cross walks at such intersections, and for repaving streets and avenues, shall be assessed ratably, according to the extent of front on the lots, parts of lots, or parcels of real estate, directly fronting on and within the local assessment district."

This, then, was the legislative determination, not only of the district, but of the apportionment of cost upon such district, and the view of this Court in Spencer vs. Merchant; Walston vs. Nevin, 128 U. S., 578; Williams vs. Eggleston, 170 U. S., 304; Parsons vs. Dis. of Columbia, 170 U. S., 45, is not open to review.

I have not overlooked the fact that many of these cases hold that the fixing of the assessment districts, and the apportionment of the cost is a legislative determination that the property within such district has been benefited, and that such determination is conclusive upon the Court. Indeed, if we are to consider that the question of benefits and advantage is a controlling factor in this class of assessments, then some tribunal must make such determination. True, the legislature may, and perhaps generally does, empower some local body like a common council or board of commissioners to prescribe the limits of the special taxing district, and to apportion the cost upon such

district. If the legislature can authorize a local body to do so, it may do itself that which it can authorize others to do; for it is difficult to imagine that a creature can possess greater powers than its creator. But whether the legislature, itself, prescribes the limits of the district, or delegates this authority to some other body, it is nevertheless the exercise of a legislative function, and I cannot comprehend how the courts can interfere with such legislative details, without judicial encroachment upon the domain of the legislature.

State laws imposing upon property, according to legislative discretion, the cost of local improvements, do not deprive the owner of his property, without due process of law, within the meaning of the 14th amendment.

In Davison vs. Administrators New Orleans, 96 U. S., 97: The State of Louisiana passed an act providing for the drainage of certain territory, established an assessment district, and apportioned the cost of such drainage upon the property within such district. This was assailed as being in violation of the constitutional provision that no State should deprive any person of life, liberty or property, without due process of law.

Mr. Justice Miller, in delivering the opinion of the Court, said: "Whenever by the laws of a State, or by State authority, a tax assessment, servitude or other burthen is imposed upon property for the public use, whether it be of the whole State or of some limited portion of the community, and those laws provide for the mode of confirming and testing the charge thus imposed, in the ordinary courts of justice with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. * * * It is said that part of the property

of the plaintiff assessed is not benefited by this improvement, but this is a matter of detail with which this Court cannot interfere."

The County of Mobile vs. Kimball, 102 U. S., 691 (238). In 1867, the legislature of Alabama created a board of commissioners for the improvement of the harbor, river and bay of Mobile, and provided that the expense thereof should be borne by the county of Mobile. It was urged against this legislation that the work was a benefit to the whole State, and objection was raised to the act for that reason. But the Court said:

"Assuming this to be so, it is no objection which destroys its validity. When any public work is authorized, it rests with the legislature, unless restricted by constitutional provisions, to determine in what manner the means to defray its cost shall be raised. It might apportion the burthen ratably among all the counties, or other particular subdivisions of the State, or the whole or greater share of the whole upon that county, or apportion the State specially and immediately benefited by the expenditure. It may be that the act, in imposing upon the county of Mobile the entire burthen of improving the river, bay and harbor of Mobile is harsh and oppressive, and that it would be more just to the people of the county if the legislature had apportioned the expense of the improvement which was a benefit to the whole State among the different counties, but this Court is not the harbor in which the people of a city or county can find refuge from ill-advised, unequal and oppressive legislation. The judicial power of the federal government can only be invoked when some right under the constitution, laws or treaties of the United States is invaded. In all other cases, the only remedy of the evils of the people which rests with the people must be obtained through a change of their representatives. They must select agents who will correct the injurious legislation as far as practicable, and be more mindful than their predecessors of the public interest."

Hager vs. Reclamation District, No. 108; 111 U. S., 701 (569). By an act of the legislature of California, passed in 1868, a general system was established for reclaiming swamp and overflowed salt, marsh and tide lands in the State. It provided for the foundation of reclamation districts to be established by the board of supervisors of the county in which the lands, or the greater part of them, were situated. The supervisors were then to appoint three commissioners to jointly view and assess upon each acre to be reclaimed or benefited, a tax, proportionate to the whole expense and to the benefits which will result from the work. The Court, in passing upon the objections to the validity of this act, said:

"The expense of such works may be charged against the parties specially benefited and be made a lien upon their property; all that is required in such cases is that the charges shall be apportioned in some just and reasonable mode according to the benefit received. Absolute equality in imposing, however, may not be reached, only an approximation to it may be attainable; if no direct and invidious discrimination in favor of certain persons, to the prejudice of others be made, it is not a valid objection to the mode pursued that to some extent inequalities may arise. It may possibly be that in some portions of the country there are overflowed lands of so large and extent that the expense of their reclamation should properly be borne by the State. But this is a matter purely of legislative discretion. *Whenever a local improvement is authorized, it is for the legislature to prescribe the way in which the means to meet its costs shall be raised, whether by general taxation, or by laying the burden upon the district specially benefited by the expenditure.* Citing Mobile vs. Kimball, 102 U. S., 704. The rule of equality and uniformity prescribed in cases of taxation for State and county purposes, does not require that all property or all persons in the county or district shall be taxed for local purposes."

It will be borne in mind that the Court here was considering the provisions of a statute which provided in terms for an assessment in proportion to benefits. The advantage which they derived from the drainage and the language used must have reference to that system of imposition of the taxes, but it recognizes the principle contended for here; that it is for the State Legislature to determine upon what territory the burden of an assessment for improvements shall be spread.

Spencer vs. Merchant, 125 U. S., 345 (31763). An assessment for the expense of regulating, grading and preparing a street for travel was laid upon the lands lying within 300 feet of each side, which, in the judgment of the commissioners, would be benefited by the improvement. The original assessment was set aside because the statute provided no means by which the owners might have notice or an opportunity to be heard in regard to the assessment for grading and preparing the street for travel. Subsequently, the legislature directed a sum equal to so much of the original assessment as remained unpaid, adding a proportional part of the expense of making that assessment and interest since, to be levied and equitably apportioned by the supervisors upon and among those lots, after public notice to all parties interested to appear and be heard upon the question. The said portion of that sum was levied and assessed accordingly upon these lots, one of which was owned by the plaintiff in this action.

"The act of 1881 determines absolutely and conclusively the amount of tax to be raised and the property to be assessed and upon which it is to be apportioned."

Mr. Justice Gray, in the opinion, said that "Each of these things was within the power of the legislature, whose action cannot be review in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. Citing, with approval, Litchfield vs. Vernon, 44 N. Y., 123; People

vs. Brooklyn, 4 N. Y., 427; People vs. Flagg, 46 N. Y., 405; Horn vs. New Lots, 83 N. Y., 100; Cooley on Taxation, 450. The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so and may settle both questions for itself, and when it does so, its action is necessarily conclusive and beyond review. Here an improvement has been ordered and made, the expense of which might justly have been imposed upon adjacent property benefited by the change. By the act of 1881 the legislature imposes the unpaid portion of the expense and cost, with interest thereon, upon that portion of the property benefited which has thus far borne none of the burden. In doing so, it necessarily determines two things, namely, the amount to be realized, and the property specially benefited by the expenditure of that amount. *The lands might have been benefited, and so the legislature determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust is not open to our review.* The question of special benefit, and the property to which it extends is, of necessity, a question of fact, and when the legislature determines it in a case within its general power, its decision must, of course, be final. We can see in the determination reached possible sources of error, and perhaps even of injustice, but we are not at liberty to say that the tax on the property covered by the law of 1881 was imposed without reference to special benefits. The legislature properly determined that the lands described in the act were peculiarly benefited by the improvement to a certain specified amount which constituted a just proportion of the whole cost and expense, and while it may be that the process by which the result was reached was not the best attainable, and some other might have been more accurate and just, we cannot, for that reason, question an enactment within the general legislative power. That power of taxation is unlimited, except that it must be exercised for public

purposes. Citing, Weisner vs. Douglas, 64 N. Y., 91. Certainly, if the acts of '69 and '70 had never been passed, but the improvement of Atlantic avenue had been ordered, the legislature might have imposed one part or proportion of the cost upon one designated district and the balance upon another. Practically just that was done in this case. * * * The legislature, in the exercise of its power, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading and repairing of a street, to be assessed upon the owners of lands benefited thereby, and the determination of the territorial district which should be taxed for local improvement is within the province of legislative discretion. * * * * In the absence of any more specfic constitutional restriction than the general prohibition against taking property without due process of law, the legislature of the State, having the power to fix the such necessary to be levied for the expense of a public improvement and order it to be assessed, either like other taxes, upon property generally, or only upon the lands benefited by the improvement, is authorized to determine both the amount of the whole tax and the class of lands which should receive the benefit, and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both these facts to the judgment of commissioners.

Walston vs. Nevin, 128 U. S., 578 (5441), was error to the Court of Appeals of Kentucky to review a judgment directing the enforcement of a lien for an assessment for a local improvement in the city of Louisville. The act under which the proceeding was taken provided that, "When the improvement is the original construction of any street, road, lane, or alley, or avenue, such improvement shall be made at the exclusive cost of the owners of lots in each fourth of a square, to be equally apportioned by the Central council according to the number of square feet owned by them respectively, except that corner lots

* * * shall pay 25 per cent more than others for such improvement. Each subdivision of territory bounded on all sides by principal streets shall be deemed a square."

"Section 4. When an improvement in public ways shall have been made * * * and the contract therefor completed, the city engineer shall, by one insertion in one of the daily newspapers published in Louisville, give notice of the time and place fixed for the inspection and reception of the work by the city engineer or either of his assistants or deputies, and such owners or their agents and representatives may appear and be heard before such engineer or his assistant or deputy, as to whether such improvement shall have been made in accordance with the ordinance authorizing the same and the contract therefor."

It will be observed that no provision was made for a hearing upon the question of the necessity of the improvement, the taxing district or the extent of the tax to be raised and levied upon the different parcels.

In this case the Court follows Davidson vs. New Orleans, 96 U. S., 104, and in commenting thereon, Mr. Justice Fuller says: "And the conclusion was reached that neither the corporate agency by which the work is done, the excessive price which the statute allows therefor, nor the relative importance of the work to the value of the lands assessed, nor the fact that the assessment is made before the work is done, nor that the assessment is unequal as regards benefits conferred, nor that personal judgment was rendered to the amount assessed, are matters in which the State authorities are controlled by the Federal Constitution. Here the determination of the taxing district and the manner of the apportionment are all within legislative power." Citing, Spencer vs. Merchant, 125 U. S., 345 (31763); Stanley vs. Albany, 121 U. S., 550; Mobile vs. Kimball, 102 U. S., 691; Hager vs. Reclamation District, 111 U. S., 701; United States vs. Memphis, 97 U. S., 284; Laramee County vs. Albany

County, 92 U. S., 397. Whenever the law operates alike on all persons and property similarly situated, equal protection cannot be said to be denied. Wertz vs. Hoagland, 114 U. S., 606; Richmond F. & P. R. R. Co. vs. Richmond, 96 U. S., 529. The remedy for abuse is in State Courts, for in the language of Mr. Justice Field, in Mobile vs. Kimball, "This Court is not the harbor in which the people of a State can find refuge from ill-advised, unequal and oppressive State legislation."

The objection urged by the complainant that no opportunity is afforded for a review or hearing upon the assessment is not well taken. The objection is based upon the provision in Section 37 of the charter of the city of Detroit: "When the assessment roll is thus completed, said board shall give notice by at least five publications in the city paper that such roll is completed and will remain in their office for twelve days from the first publication of said notice for the inspection of all concerned; after the expiration of said twelve days, said board shall, after any needful revision and correction of said roll, sign the same and report it to the common council."

I really concede that a right of hearing should be granted in all cases where the apportionment of the tax involves the exercise of judgment or a determination upon some question of fact, as, for instance, valuation, or the extent of benefits, where a tax is assessed upon such a theory, or where life or liberty is involved; but that rule does not obtain where the assessment involves only a mathematical calculation, as where a fixed sum is to be apportioned, and levied according to a fixed rule; for a hearing in such case would not avail the party, for no alteration could be made. This view is sustained by numerous authorities: Cleveland vs. Tripp, 13 R. I., 60; Amery vs. Keokuk, 72 Io., 704; Galette vs. Denver, 21 Fed., 824, both holding notice unnecessary when assessment is determined by mere mathematical computation; Reclamation District vs. Phillips, 108 Cal., 314, holding no notice or hearing required where

legislature has apportioned tax; Commonwealth vs. Lehigh R. R. Co., 12 Pa. St., 456, holding tax on corporation loans valid without hearing; Maderia Irrigation District, 14 L. R. A., 755 (Cal.).

In Hager vs. Reclamation District, No. 110, 111 U. S., 701, it was contended that inasmuch as no notice was provided for or given that the act was void, and that the taking of property thereunder did not constitute due process of law. The Court said:

"Undoubtedly, where life and liberty are involved, due process requires that there be a course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved. But where the taking of property is in the enforcement of a tax, the proceeding is necessarily less formal, and whether notice to him is at all necessary may depend upon the character of the tax, and the manner in which its amount is determinable. The necessity of revenue for the support of the government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments. As stated by Mr. Justice Bradley in his concurring opinion in Davidson vs. New Orleans: 'In judging what is due process of law, respect must be had to the cause and the object of the taking, whether under the taxing power, the power of eminent domain, the power of assessment for local improvements, or some of these, and if found to be suitable or admissible in the special case, it will be adjudged to be due process of law; but if found to be arbitrary, oppressive and unjust, it may be declared to be not due process of law. The power of taxation possessed by the State may be exercised upon any subject within the jurisdiction of the State, and to any extent not prohibited by the Constitution of the United States. As said by this Court: "It may touch property in every shape, in its natural condition, in its manufactured

form and in its various transmutations and the amount of the taxation may be determined by the value of the property or its use or its capacity or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures and in transportation. Unless restrained by the provisions of the federal constitution, the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction." State Tax on Foreign Bonds, 15 Wal., 319.

Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and generally, specific taxes on things or persons or occupations. In such cases, the legislature in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his property. Yet there can be no question that the proceeding is due process of law, as there is no inquiry into the weight of evidence or other element of judicial nature, and nothing could be changed by hearing the taxpayer. No right of his is therefore violated. Thus, if the tax on animals be a fixed sum per head, or on articles a fixed sum per yard, or bushel or gallon, there is nothing the owner can do which can effect the amount to be collected from him. So if a person wishes a license to a business of a particular kind, or at a particular place, such as keeping a hotel or restaurant, or selling liquors or cigars or clothes, he has only to pay the amount required by law and go into business. There is no need in such case for a notice or hearing. So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in a State, or on domestic corporations for franchises, if the parties desire the

privilege they have only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it. But where a tax is levied on property not specifically but according to its value, to be ascertained by assessors appointed for that purpose, upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value act judicially, and in most of the States provision is made for the correction of errors committed by them."

In Spencer vs. Merchant, supra, it was complained that the act did not give the land owners an opportunity to be heard as to the original apportionment, although it did give them an opportunity to raise all pertinent and available questions, and dispute their liability as to its amount and extent. The court, in speaking of this objection, said: "That objection becomes a criticism upon the action of the legislature, and the process by which it determined the amount to be raised, and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The legislature determines the expenditures and the amounts to be raised for their payment, the whole discussion and all questions of prudence, propriety and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion. In this case, it kept within its power, when it fixed, first the amount to be raised to discharge the improvement debt incurred by its direction; second, when it designated the lots and property which, in its judgment, by reason of special benefits, should bear the burden."

Again, "When the determination of lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited, and how much, but the legislature has the power to determine, by the statute imposing the tax, what lands which might be benefited by the improvement are, in fact, benefited, and if it does so,

its determination is conclusive upon the owners, and the courts and the owners have no right to be heard upon the question whether their lands are benefited or not, but only upon the validity of the assessment and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited. In determining what lands are benefited, the legislature may avail itself of such information as it deems sufficient, either through investigation by its committees or by adopting as its own, the estimates or conclusions of others whether those estimates or conclusions previously had or had not any legal sanction."

I do not understand that there was in this case any specific declaration by the legislature that the lots within the assessment district were specially benefited. Mr. Justice Gray said that the legislature practically determined that the lands described in that act were peculiarly benefited, and I infer that this practical determination was involved in the designation of the lands which should be assessed. In other words, that the legislature had in view the idea of benefits in fixing assessment districts, without expressly so declaring.

In Williams vs. Eggleston, 170 U. S., 304, Mr. Justice Brewer, speaking for the Court, said: "Neither can it be doubted that if the state constitution does not prohibit, the legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district, and what property shall be considered as benefited by a proposed improvement. And in so doing, it is not compelled to give notice to the parties resident within the territory, or permit a hearing before itself, one of its committees, or any other tribunal, as to the question whether the property so included within the taxing district is, in fact, benefited."

In this case a portion of the cost of the purchase of a toll

bridge over the Connecticut River at the city of Hartford was apportioned among five towns, designated by the legislature.

Parsons vs. District of Columbia, 170 U. S., 45, was a proceeding to test the legality of a special assessment made against the plaintiff's land for a water main tax or assessment, for laying a water main in the street, on which petitioner's land abuts. The act of the Legislative Assembly of the District of Columbia, June 23, 1873, provided that "hereafter in order to defray the expense of laying water mains and the erection of fire plugs, there be and is hereby levied a special tax of 1¼ cents per square foot on every lot or part of lot which binds in or touches on any avenue, street or alley in which a main water pipe may hereafter be laid, and fire plug erected." By act of Congress, August 11, 1894, it was provided that hereafter all assessments levied for laying water mains in the District of Columbia shall be at the rate of $1.25 per linear front foot, against all lots or land abutting upon a street, road or alley in which a water main shall be laid." 28 St. at L., 275.

Mr. Justice Shiras delivered the opinion of the Court and held: "By this legislation a comprehensive system, regulating the supply of water and the erection and maintenance of reservoirs and of water mains was established and of this legislation every property owner in the District must be presumed to have notice. And accordingly when by the act of August 11, 1894, Congress enacted that thereafter assessments levied for laying water mains in the District of Columbia should be at the rate of $1.25 per linear foot against all lots or lands abutting upon the street, road or alley in which a watermain was laid, such act must be deemed conclusive alike of the question of the necessity of the work and *of the benefits as against abutting property*. To open such questions for review on the petition of every or any property holder would create endless confusion. Where the legislature has submitted these questions for inquiry to a commis-

sion or official persons to be appointed under municipal ordinances or regulations, the inquiry becomes in its nature judicial in such a sense that the property owner is entitled to a hearing, or to notice, or an opportunity to be heard."

Here, again, the court seems to treat the designation by Congress of the particular property to be assessed as implying a finding and determination of the benefits as against abutting property.

IV.

He who seeks equity, must do equity.

The complainant asks a court of equity to relieve him from payment of an assessment made upon his property for the paving of a street, in front thereof; not because such assessment is unjust; not because it is excessive; not because complainant conceives or alleges himself to have been injured thereby, but solely upon the ground that the proceedings had and taken have not been in accordance with law. He does not offer in his bill to pay any sum which the court may find that he equitably ought to pay. He has stood by and seen this work proceed, the expenditure of money which must necessarily result in some benefit to him, and such work and expenditure having been made in reliance upon the supposed regularity of the proceedings looking to the assessment, he remained silent, and not until after the completion of the work, when all possible advantages accrued to him, do we hear him complain.

I have not understood the majority opinion in the Norwood case to extend any further than to treat an assessment void as to the excess thereof, over the benefits or advantages received by the property assessed, and I think that in cases of this class the complainant should be required to offer, in his bill, to pay any sum which the court might find to be deemed equitable and just, before asking relief of a court of equity.

The Supreme Court of Michigan has repeatedly held that the owner of land, who sits by when improvements are being made, under statutory authority, knowing that the only method of compensating those who perform the labor is by an assessment, cannot after the benefits have been reaped, resort to a court of equity for redress.

Byram vs. Detroit, 50 Mich., 56.
Twist vs. City of Port Huron, 63 Mich., 528.
Lundbon vs. City of Manistee, 93 Mich., 170.
Goodwillie vs. Detroit, 103 Mich., 283.
Atwell vs. Barnes, 109 Mich., 10.
Moore vs. McIntyre, 110 Mich., 237.

I respectfully submit that this case ought to be decided upon the principle and rule laid down that special assessments, like all other taxation, is the exercise by the state, either directly or through its municipalities, of the sovereign power of taxation. Second, that the assessment or tax thus imposed is in the nature of a burden; a duty which every inhabitant owes to the state to assist in bearing such burden. Third, that the question of benefits or advantages to be derived from the local improvement is but an incident, and not the necessary foundation of the power to impose such tax or assessment. Fourth, that when the legislature, either by itself or by delegation to one of its agencies, has fixed and determined a district, and apportioned the cost thereon, *ratably upon all alike within such district*, no constitutional rule is violated. Fifth, it should be laid down by this court as a principle, that any state possesses the power to levy taxes and assessments within its jurisdiction in any manner that the legislative wisdom or judgment may determine, unless restrained by some constitutional limitation, to be found in the constitution of such state. Sixth, that such matters of local state policy are of no concern to the Federal government, and hence, no federal

question is involved in this case. That the complainant has not set forth a case which entitles him to equitable relief, because he has not offered to do equity, and seventh, if the Court should hold to complainant's contention that the assessment cannot be sustained in its entirety, then the court should direct reference to the court below to ascertain the extent to which complainant has been benefited, by reason of this improvement, and enter a decree accordingly.

Very respectfully,

TIMOTHY E. TARSNEY,

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